

BEFORE THE  
ADMINISTRATIVE HEARING COMMISSION  
STATE OF MISSOURI

**FILED**  
JUN 01 2005  
ADMINISTRATIVE HEARING  
COMMISSION

STATE BOARD OF REGISTRATION )  
FOR THE HEALING ARTS )

Petitioner, )

v. )

Case No. 03-2005 HA

HOWARD D. ELLIS, M.D., )

Respondent. )

**JOINT STIPULATION OF FACTS, WAIVER OF HEARINGS BEFORE THE  
ADMINISTRATIVE HEARING COMMISSION AND THE STATE BOARD OF  
REGISTRATION FOR THE HEALING ARTS, AND CONSENT ORDER WITH  
JOINT PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Pursuant to the rules governing practice and procedure before the Administrative Hearing Commission 1 CSR 15-2.450(1), and pursuant to the terms of §536.060, RSMo 1994, as it is made applicable to the Administrative Hearing Commission by §621.135, RSMo 1994, Howard D. Ellis, M.D., Respondent, and the Missouri State Board of Registration for the Healing Arts (the Board) waive their right to a hearing and decision in the above-styled case by the Administrative Hearing Commission (the Commission) and, additionally, the right to a disciplinary hearing before the State Board of Registration for the Healing Arts under §621.110, RSMo 1994, and jointly stipulate and agree that a final disposition of this matter may be effectuated as described below in this *Joint Stipulation of Facts, Waiver of Hearings Before the Administrative Hearing Commission and the State Board of Registration for the Healing Arts, and Consent Order with Joint Proposed Findings of Fact and Conclusions of Law* (the Agreement).

1. Respondent, Howard D. Ellis, M.D., acknowledges that he understands the various rights and privileges afforded him by law and understands this Agreement is in lieu of a contested case hearing by the Administrative Hearing Commission where Respondent would have the right to appear and be represented by counsel; the right to a hearing of the charges pending against him; the right to have all charges against Respondent proven upon the record by competent and substantial evidence; the right to cross-examine any witness appearing at the hearing against Respondent; the right to present evidence on Respondent's own behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative commissioner concerning the charges pending against Respondent; the right to a ruling on questions of law by an administrative hearing commissioner; the right to seek recovery of attorney's fees and costs; the right to a disciplinary hearing before the Board at which time evidence may be presented in mitigation of discipline and the right to obtain judicial review of the decisions of the Commission and the Board. Having been advised of these rights as provided by operation of law, Respondent knowingly and voluntarily waives each and every one of these rights and freely enters into this *Joint Stipulation of Facts, Waiver of Hearings before the Administrative Hearing Commission and the State Board of Registration for the Healing Arts, and Consent Order With Joint Proposed Findings of Fact and Conclusions of Law* and agrees to abide by the terms of this document as they pertain to Respondent.

2. Respondent acknowledges that he has received a copy of the Complaint filed with the Commission in this cause.

3. The parties to this Agreement stipulate that the **Consent Order** voluntarily agreed to by Respondent in lieu of a disciplinary hearing in Part II herein is based only on the **Joint Proposed Findings of Fact** set out in Part I herein. Respondent understands the Board may take further

disciplinary action against Respondent based on facts or conduct not specifically mentioned in this document that are either now known to the Board or may be discovered after the approval of this Agreement by the Commission. Respondent and the Board both agree that this Agreement dismisses with prejudice all other factual allegations set forth in the Complaint filed with the Commission in this cause, unless otherwise described herein.

4. Respondent, together with his heirs and assigns, and his attorneys, hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees costs and expenses, and compensation, including, but not limited to any claims for attorneys fees and expenses, including any claims pursuant to §536.087, RSMo, or any claim arising under 42 U.S.C. 1983, which may be based upon, arise out of, or relate to any of the matters raised in this Agreement, or from the negotiation or execution of this Agreement. The parties acknowledge this paragraph is severable from the remaining portions of this Agreement in that it survives in perpetuity even in the event that any court of law deems this Agreement or any portion thereof void or unenforceable.

5. Respondent understands and agrees that the Missouri State Board of Registration for the Healing Arts will maintain this Agreement as an open record of the Board as required by Chapters 334, 610, 620 and 621, RSMo, as amended.

#### **I.**

Based upon the foregoing, Petitioner and Respondent herein jointly stipulate to the following Joint Proposed Findings of Fact and Joint Proposed Conclusions of Law and request that the Administrative Hearing Commission adopt the Joint Proposed Findings of Fact and the

Joint Proposed Conclusions of Law as the Commission's Findings of Fact and Conclusions of Law:

**JOINT PROPOSED FINDINGS OF FACT**

1. The Missouri State Board of Registration for the Healing Arts (the Board) is an agency of the State of Missouri created and established pursuant to §334.120, RSMo, for the purpose of executing and enforcing provisions of Chapter 334, RSMo, Physicians and Surgeons.
2. Respondent, Howard D. Ellis, M.D. (Dr. Ellis), is licensed by the Board as a physician and surgeon.
3. Dr. Ellis's license, No. MD R9586, is and at all times hereinafter mentioned, was current and active.
4. Dr. Ellis is board certified in Obstetrics and Gynecology, and maintains an office located at 10800 Farley, Suite 265, in Shawnee Mission, Kansas.
5. In 1999, Dr. Ellis maintained an office through the Hiebert Center at 1004 Carondelet Drive in Kansas City, Missouri.
6. In May 1999, patient V.R. was under the care and treatment of Dr. Ellis and John M. Hiebert, M.D.
7. On May 4, 1999, patient V.R. underwent laser resurfacing, erbium laser and punch biopsy excisions and a mini-lower blepharoplasty. Dr. Hiebert performed the blepharoplasty. Dr. Ellis performed the laser resurfacing and one or more of the thirty-five punch biopsy excisions.
8. Dr. Hiebert dictated an Operative Report (herein the "Original Report") describing the blepharoplasty procedure that he performed. Dr. Hiebert also stated that Dr. Ellis would

dictate separately the procedures he carried out for the punch biopsy excisions and the laser resurfacing that he performed.

9. Dr. Hiebert's dictation was subsequently transcribed into writing as the Original Report, which thereafter was placed in the patient's file.
10. In response to a lawful Board subpoena for records that was served upon Dr. Ellis in July 2002, Dr. Ellis submitted and relied upon an Alternative Operative Report (herein the "Alternative Report") that includes dictated notes purportedly from both Dr. Hiebert and Dr. Ellis for the May 4, 1999 procedures.
11. The Alternative Report states that Dr. Hiebert, and not Dr. Ellis, performed the May 1999 punch biopsy excisions on patient V.R.
12. Upon review of the Alternative Report, Dr. Hiebert has stated that he did not dictate the operative note allegedly attributed to him; furthermore, he states he had not previously seen the Alternative Report.
13. For purposes of this settlement document only the parties acknowledge the Alternative Report as submitted was not a true and accurate reflection of the medical care provided V.R.
- ~~14.~~ The parties agree that all other assertions pertaining to the medical record of V.R. or the care and treatment of V.R. are dismissed with prejudice. Further, this Agreement shall not be construed as an admission by Dr. Ellis as to these other assertions.
- ~~15.~~ The parties agree that all assertions pertaining to patient K.T. are dismissed with prejudice. However, the parties do stipulate that nothing in the Board's investigation of this claim has called into question the veracity of Mark Schroeder, M.D., who was identified in the Complaint with respect to these assertions. Notwithstanding this

stipulation, this Agreement shall not be construed as an admission by Dr. Ellis as to these other assertions.

### JOINT PROPOSED CONCLUSIONS OF LAW

16. Pursuant to § 334.100.2, RSMo Supp, 1997-2004, the Board is authorized to discipline a licensee for conduct that violates one or more provisions of Chapter 334 or any lawful rule or regulation promulgated and adopted thereunder.
17. Section 334.100.2 (4) and (5), RSMo Supp. 1997-2004, provides the following as grounds for discipline:
  2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:
    - (4) Misconduct, fraud, misrepresentation, dishonesty, unethical conduct or *unprofessional conduct in the performance of the functions or duties of any profession licensed or regulated by this chapter*, including, but not limited to, the following:
      - (m) Failure to comply with any subpoena or subpoena duces tecum from the board or an order of the board;
      - (14) Knowingly making, or causing to be made, or aiding, or abetting in the making of, a false statement in any birth, death or other certificate or document executed in connection with the practice of the person's profession
18. Unprofessional conduct applies to both unintentional conduct and intentional conduct. *Missouri Bd. of Registration for the Healing Arts v. Swanson*, No. HA-99-1039, at 28 (Mo. Admin. Hearing Comm'n, Sept. 12, 2001).

19. There is sufficient cause for the Board to hold a disciplinary hearing pursuant to § 334.100.2(4)(m) because Dr. Ellis' reliance on the Alternative Report in responding to a Board subpoena can constitute unprofessional conduct as noted in the *Swanson* case above.
20. There is sufficient cause for the Board to hold a disciplinary hearing pursuant to § 334.100.2(14) because Dr. Ellis' submission aided and/or abetted in the making of a false statement or document executed in connection with his professional practice.
21. The parties agree that neither the Joint Proposed Findings of Fact nor the Joint Conclusions of Law shall be construed that Dr. Ellis knowingly made or caused to be made the Alternative Report.

## II.

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the **Consent Order** entered by the Missouri State Board of Registration for the Healing Arts in this matter under the authority of §621.110, RSMo 1994. This Consent **Order** will be effective immediately upon the issuance of the consent order of the Administrative Hearing Commission approving this Agreement without further action by either party.

A. The license, **number R9586**, issued to Respondent Howard D. Ellis, M.D. is hereby **VOLUNTARILY RETIRED IN LIEU OF A DISCIPLINARY HEARING**.

B. Said retirement, while resolving all factual assertions set forth in this Agreement, or identified in Petitioner's Complaint, is non disciplinary in its nature.

C. Said retirement is permanent and any attempt for future licensure in Missouri will require Dr. Ellis to re-apply for a medical license with the full understanding that he will have to demonstrate his qualifications at that future date as applicable to any applicant, and, further, that the Board will have full discretion in determining whether to issue him a license.

D. Dr. Ellis agrees and understands just as any unlicensed person that he may not hold himself out as licensed to practice medicine in the state of Missouri at any time after his license retires. Furthermore, Dr. Ellis agrees and understands that he may not practice, or offer

to practice, medicine in the state of Missouri at any time after his license retires. This prohibition would not prevent Dr. Ellis from advertising in the greater Kansas City metropolitan area as long as: a) he clearly identifies himself as being licensed only in Kansas and/or b) restricts any advertisements to instance where there is only a Kansas address or Kansas phone number included in the advertisement.

E. If the Board determines that Dr. Ellis violated a term or condition of this Agreement, the Board may move to reinstate above-referenced cause of action and any statute of limitation is expressly tolled or waive for such purposes.

F. In the event the Board determines Dr. Ellis violated any term or condition of this and Agreement, the Board may, after conducting an evidentiary hearing, vacate and set aside the retirement and instead probate, restrict, suspend, revoke or otherwise lawfully discipline this license as authorized by law. Additionally, the Board may afford itself of the remedies provided for under Missouri law.

G. Each party shall bear its own attorney costs.

H. This Consent Order does not bind the Board or restrict the remedies available to it concerning any other violation of Chapter 334, RSMo, by Dr. Ellis not specifically mentioned in this document or the Board's Complaint in this matter.

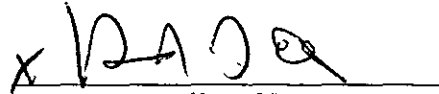
I. The parties understand that this Agreement will be maintained as a public document under Missouri law and that this resolution is reportable to the National Practitioner's Data Bank, the Federation of State Medical Boards, as well as the Board's newsletter and website.

In consideration of the foregoing, the parties consent to the entry of record and approval of this *Joint Stipulation of Facts, Waiver of Hearings before the Administrative Hearing Commission and the State Board of Registration for the Healing Arts, and Consent Order with Joint Proposed Findings of Fact and Conclusions of Law* and to the termination of any further proceedings before the Administrative Hearing Commission based upon the complaint filed by Board in the above-styled case.



**RESPONDENT**

LICENSEE

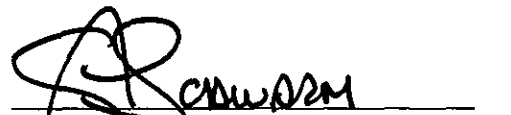
  
Howard D. Ellis, M.D.

**PETITIONER**

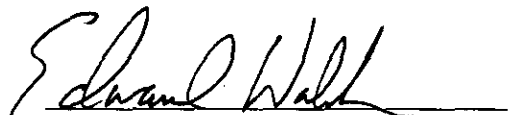
STATE BOARD OF REGISTRATION FOR THE  
HEALING ARTS

  
Tina Steinman  
Executive Director

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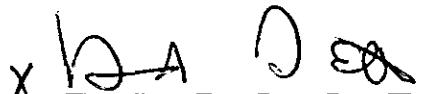
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Dated: May 24, 2005

**WAIVER OF CHAPTER 536, RSMO, APPEAL**

Respondent hereby voluntarily waives any all rights to appeal this Agreement and  
Consent Order as provided for in Chapter 536, RSMo.

  
Howard D. Ellis, M.D.

Date Waived: May 19, 2005